

**STATE OF RHODE ISLAND  
PROVIDENCE, Sc.**

**DISTRICT COURT  
SIXTH DIVISION**

**Kenneth Abbott**

**v.**

**Rhode Island Division of Motor Vehicles  
(Adjudication Office)**

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**A.A. No. 2023 – 068**

**O R D E R**

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED that the Findings and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the decision rendered by the Adjudication Office Division of Motor Vehicles in this matter is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 16<sup>th</sup> day of September, 2024.

**By Order:**

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

**Enter:**

\_\_\_\_\_/s/\_\_\_\_\_  
Jeanne E. LaFazia  
Chief Judge

**STATE OF RHODE ISLAND  
PROVIDENCE, Sc.**

**DISTRICT COURT  
SIXTH DIVISION**

**Kenneth Abbott** :  
 :  
 v. : **A.A. No. 2023 – 068**  
 :  
 **R.I. Division of Motor Vehicles** :  
 **(Adjudication Office)** :

**FINDINGS AND RECOMMENDATIONS**

**Ippolito, M.** In this case Mr. Kenneth Abbott seeks to overturn the refusal of the Division of Motor Vehicles (the DMV) to reinstate his license to operate a motor vehicle pursuant to G.L. 1956 § 31-11-7(a)(1)(iii) because, in its judgment, he poses “an imminent safety risk on the highways.”

Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-11-15 and the applicable standard of review is found in G.L. 1956 § 42-35-15(g). This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. After a review of the entire record I find, for the reasons explained below, that the decision rendered by the DMV in this case should be AFFIRMED. I so recommend.

**I**  
**Facts and Travel of the Case**

The instant case arose in this way: on June 26, 2021, Mr. Kenneth Abbott was charged with the criminal offense of Driving While Under the Influence and the civil violations of (a) refusal to submit to a chemical test, (b) failing to wear a seat belt, and (c) a turn signal violation.<sup>1</sup> On March 1, 2023, the enumerated civil charges were before a Magistrate of the Traffic Tribunal, who then learned that Mr. Abbott had initially been deemed incompetent to stand trial on the DUI case; by letter dated March 7, 2023 the Magistrate informed the Chief of the DMV's Adjudication Office, Mr. J. Darren Stewart, of this circumstance and suggested that the Medical Advisory Board be tasked to consider whether Mr. Abbott should retain the privilege to operate a motor vehicle.<sup>2</sup>

Consequently, on March 10, 2023, Mr. Stewart wrote to Mr. Abbott, informing him of the referral which had been received and that he should contact the secretary to Medical Advisory Board, following which, he would receive a call from an Appeals Officer.<sup>3</sup> And, on March 28, 2023, Mr. Abbott did indeed receive a

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<sup>1</sup> See *Letter from Traffic Tribunal Magistrate, the Hon. Alan R. Goulart, to J. Darren Stewart, Chief of the Adjudication Office of the Division of Motor Vehicles*. This document may be found in the electronic record attached to this case under the heading "10/18/2023 Records Received Administrative Record," at 5.

<sup>2</sup> *Id.* The Magistrate disclosed that Mr. Abbott's license was then suspended. *Id.*

<sup>3</sup> See *Letter from J. Darren Stewart, Chief of the Adjudication Office of the Division of Motor Vehicles, to Mr. Abbott, Dated March 10, 2023*. This document may be found in the electronic record attached to this case under the heading "10/18/2023 Records Received Administrative Record," at 11.

call from a hearing officer, Ms. Mirna Pineda.<sup>4</sup> In a summary of her telephone conversation with Mr. Abbott, she reported that Appellant stated that he suffers from depression and anxiety.<sup>5</sup> In her opinion, Mr. Abbott was coherent during the entirety of their 30-minute conversation.<sup>6</sup> She informed Mr. Abbott that medical questionnaires would be transmitted to his therapist and his primary care physician.<sup>7</sup> *See Responses from Appellant’s Clinical Therapist and his Primary Care Physician.*<sup>8</sup> Thereafter, the Medical Advisory Board met to consider Mr. Abbott’s case. Simply stated, they recommended that he complete one year of alcohol/substance abuse counselling including weekly toxicology screens.<sup>9</sup>

Then, on October 10, 2023, Mr. Abbott filed the instant appeal in the Sixth Division District Court.<sup>10</sup> As his reasons for his appeal, Mr. Abbott provided a conglomeration of his difficulties, from which we may discern the following enumeration: (1) that he took an alcohol education course, (2) that his counselor

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<sup>4</sup> *See Summary of Telephone Hearing Conducted on March 28, 2023 by Appeals Officer Mirna Pineda.* This document may be found in the electronic record attached to this case under the heading “10/18/2023 Records Received Administrative Record,” at 10.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> These documents, which were issued on March 28, 2023, may be found in the electronic record attached to this case under the heading “10/18/2023 Records Received Administrative Record,” at 8-9.

<sup>8</sup> *Id.* at 6-7.

<sup>9</sup> *See Letter from J. Darren Stewart, Chief of the Adjudication Office of the Division of Motor Vehicles, to Mr. Abbott, Dated September 27, 2023.* This document may be found in the electronic record attached to this case under the heading “10/18/2023 Records Received Administrative Record,” at 3.

<sup>10</sup> *See Appeal Form for Administrative Appeal No. 6AA-2023-00068,* which may be found under the heading “10/10/2023 Administrative Appeal Filed” in the electronic record attached to that case, at 1.

cleared him to drive, (3) that his doctor cleared him to drive, (4) that when CCRI did a DUI assessment on him in October of 2021, it was concluded that he did not need alcohol counseling, (5) he has not had a drink in three years, with the exception of a sip of champagne at a wedding, and (6) every doctor has told him his problem is not drinking, but depression.<sup>11</sup>

After the DMV furnished the Court with the Administrative Record in the case, a telephone conference was conducted in the case on January 17, 2024. When no agreement could be reached on the case a briefing schedule was established. Subsequently, memoranda were received from Appellant, on February 9, 2024, and the DMV, on March 18, 2024.

## II

### **Standard of Review under the Administrative Procedures Act**

The standard of review which this Court must employ in the instant case is enumerated in G.L. 1956 § 42-35-15(g), a provision of the Rhode Island Administrative Procedures Act (APA), which provides as follows:

(g) *Standard of review.* The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;

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<sup>11</sup> See *Reasons for Appeal*, which may be found under the heading “10/10/2023 Administrative Appeal Filed” in the electronic record attached to that case, at 2-3.

- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Under the APA standard, the District Court “\* \* \* may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’” *Guarino v. Dep’t of Soc. Welfare*, 122 R.I. 583, 588, 410 A.2d 425, 428 (1980). Thus, the Court will not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *Cahoone v. Bd. of Rev. of the Dep’t of Emp’t Sec.*, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). Stated differently, the findings of the agency must be upheld even though a reasonable mind might have reached a contrary result. *Id.* at 506-07, 246 A.2d at 215.

### III

#### **Law Applicable to the Case: Authority to Issue or Suspend Licenses**

The Division of Motor Vehicles (DMV) is a component part of Rhode Island’s Department of Revenue. G.L. 1956 § 31-2-1. The DMV is led by an Administrator, who is responsible for the enforcement of the Motor Vehicle Code (Title 31). G.L. 1956 § 31-2-3. The DMV is granted the authority to issue licenses to operate motor vehicles by § 31-2-1. The DMV is barred from issuing licenses in several circumstances enumerated in G.L. 1956 § 31-10-3. Other provisions of the General Laws specify the circumstances under which an operators’ license may be suspended. Among these are:

(1) G.L. 1956 § 31-11-7(a)(1)(i), where the person has been convicted of certain traffic offenses; and

(2) G.L. 1956 § 31-11-7(a)(1)(iii), where the operator “[p]oses an imminent safety risk to the general public as determined by the application of objectively ascertainable standards.” When proceeding under this subsection, the DMV must prove the motorist’s lack of fitness by clear and convincing evidence. G.L. 1956 § 31-11-7(d). The DMV may be assisted in making a determination under this subsection by the Medical Advisory Board established in G.L. 1956 § 31-10-44(b).

On March 9, 2023, in *Aaron Wilson v. Rhode Island Division of Motor Vehicles (Adjudication Office)*, this Court ruled that a suspension ordered by a judge pursuant to the drunk driving statute, G.L. 1956 § 31-27-2, and effected by the DMV pursuant to G.L. 1956 § 31-11-7(a)(1)(i), did not preclude a further suspension (or a refusal to reissue) pursuant to G.L. 1956 § 31-11-7(a)(1)(iii).<sup>12</sup>

### III Analysis

Mr. Abbott’s overarching viewpoint about this case, as explained in the memorandum he filed in February, is that he should not be required to undergo further counselling and urine tests because he has undergone such treatment on prior occasions and has been alcohol free, except for a sip of champagne at a family

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<sup>12</sup> A.A. No. 2022-195 (Dist.Ct. 3/9/2023), at 5-6.

wedding; he complains that he was never told that these things would be required of him and that, if they had been, he would have had them done.<sup>13</sup>

This assertion may well be true. However, let us recall the way this controversy began. It began when a judicial officer shared with the DMV his concerns about Mr. Abbott’s ability to drive safely. At that point the DMV was duty-bound, under § 31-11-7(a)(1)(iii), to review the matter; specifically, the Office of Adjudication, with the assistance of the Medical Advisory Board, was tasked with considering whether Mr. Abbott presented “an imminent safety risk to the general public as determined by the application of objectively ascertainable standards.” After doing so, the DMV found that he did. To insure the public safety, the Office of Adjudication adopted the recommendation of the Medical Advisory Board that Mr. Abbott be required to document “the completion of one (1) year of alcohol/substance abuse counseling including weekly toxicology screens.”<sup>14</sup>

This recommendation is entirely consistent with the standards that have been established by law in the regulations that have been promulgated for the proceedings of the Medical Advisory Board — particularly subsection 280-RICR-30-05-3.7(E), which sets forth the approach to be taken when the driver under review has had three drunk-driving and/or refusal cases:

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<sup>13</sup> *Appellant’s Memorandum, passim.*

<sup>14</sup> *See Letter from J. Darren Stewart, Chief of the Adjudication Office of the Division of Motor Vehicles, to Mr. Abbott, Dated September 27, 2023.* This document may be found in the electronic record attached to this case under the heading “10/18/2023 Records Received Administrative Record,” at 3.



E. In reviewing license privileges after three (3) offenses for DWI or refusals, the following protocol shall be utilized:

1. The applicant must have evidence of treatment by a licensed professional (MD, PhD, MSW, Certified Alcohol Counselor) after the most recent offense.

2. A licensed professional shall certify that the applicant is reporting one (1) year of sobriety (the last drink or use of illicit substances was more than one (1) year ago), and that the examination done by the professional is consistent with that report.

*See* 280-RICR-30-05-3.7(E).

And Mr. Abbott was such a driver. Within the record is Mr. Abbott's driving abstract, which demonstrate adjudications for alcohol offenses in 1998, 1999, and 2020.<sup>15</sup> Thus, Mr. Abbott was not singled out by the Board because of his mental health issues. He was treated consistently with the relevant established protocol; no better and no worse. The DMV was not required to accept his self-serving statements that he had been, within one exception, sober for three years. Pursuant to the regulation, the DMV was entitled to insist on verified screens; and it was permitted to insist upon counseling targeted to substance abuse issues.

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<sup>15</sup> *See Certified Driving Record Abstract of Mr. Kenneth Abbott.* This document may be found in the electronic record attached to this case under the heading "10/18/2023 Records Received Administrative Record," at 2. It may be noted that the incident on June 21, 2021, referenced by the Traffic Tribunal Magistrate in his letter, was not referenced on the abstract, as it had not been adjudicated.

As well it should not have been, since it appears that the refusal case emanating therefrom was dismissed on July 19, 2023. *See* Electronic Record in RITT summons number 21-001-523329. And it further appears that the drunk-driving case stemming from the same incident was dismissed on June 13, 2023. *See* Electronic Record in Superior Court complaint number P3-2021-3430A. (Note: on this same date an order entered finding him to be incompetent to stand trial. *See* electronic record in 6AA-2023-00068, under the heading "10/18/2023 Records Received Administrative Record," at 4).

